

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENTS

Agenda # III.B.1.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend and adopt air quality rules to establish limits on mercury emissions from coal-fired electric utility steam generating units (EGUs), i.e., coal-fired power plants, and to adopt a limited mercury emission credit trading program.

List of Affected Rules: This request to initiate rulemaking would amend ARM 17.8.740 and 17.8.767. The proposed new rules would be codified in ARM Title 17, chapter 8, subchapter 7.

Affected Parties Summary: The proposed amendments and new rules would affect owners and operators of existing and proposed coal-fired power plants.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments and adoption, and take testimony on inclusion of the rule amendments and new rules in the State Plan required to be submitted to the Environmental Protection Agency (EPA) under the Clean Air Mercury Rule (CAMR).

Background: The Department is proposing that the Board amend rules and adopt new rules to regulate mercury emissions from coal-fired electric utility steam generating units (EGUs). Currently, EGUs are the only major industrial source of mercury emissions for which mercury is not regulated as a hazardous air pollutant under the Montana or federal Clean Air Acts. On May 18, 2005, EPA adopted CAMR, which includes a model cap and trade program, stating that a cap and trade program is the most cost-effective means to achieve mercury reductions from EGUs. Under CAMR, states may elect to participate in an EPA-managed cap and trade program by adopting EPA's Model Rules or may elect not to participate in an EPA-managed cap and trade program, in which case the state's budget becomes a firm cap for the state. CAMR requires states not adopting the Model Rule to submit for approval a State Plan that would limit mercury emissions to the budget listed in the EPA rule. The proposed amendments and new rules would restrict mercury emissions from EGUs in order for Montana to comply with its EGU mercury budget under CAMR.

The proposed amendments and new rules would:

- define certain words and phrases used in the new rules;
- incorporate by reference the provisions of CAMR that relate to mercury emission limits for EGUs (40 CFR 60, Subpart Da);
- limit EGU mercury emissions to 0.9 lb/TBtu, on a rolling 12-month average, and require operation of equipment, by January 1, 2010, that is projected to meet that limit;
- provide that if the owner or operator properly installs and operates technology to achieve the mercury emission limit, but the EGU fails to meet the limit, the Department may establish an alternative limit that would be effective for four years;
 - upon expiration of an alternative limit, the Department may establish a new

alternative emission limit that is as stringent as, or more stringent than, the initial alternative limit;

- limit the Department's authority to initiate an enforcement action for certain violations of the mercury emission limit;
- allow an EGU with more than one mercury emitting generating unit to demonstrate compliance on a facility-wide basis;
- require the owner or operator of an EGU to monitor compliance with the mercury emission standard, or any applicable alternative mercury emission limit, pursuant to the monitoring requirements of CAMR found in 40 CFR 60.48(a) through 60.52(a);
- require the owner or operator of an EGU to submit to the Department quarterly reports specifying the monthly average mercury emission rate for each month of the quarter and the percentage of time the monitoring method being used was operating during the quarter;
- implement a mercury emissions credit trading program extending only until December 31, 2014. EPA has informed the Department that it will not approve a mercury emissions credit trading program that limits trading to intrastate trading only. However, as stated in the Reason section of the attached MAR notice, the Board will consider comments on proposed amendments and new rules not included in the notice, including full participation in EPA's mercury emissions credit trading program.

Hearing Information: The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments and adoption, and inclusion of the proposed amendments and new rules in the State Plan required to be submitted to EPA under CAMR. The Board will also consider comments not only on the proposed amendments and new rules but also on amendments and new rules that would achieve mercury reductions at least as stringent as those necessary to meet the mercury budgets established by EPA for the state.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment and Adoption;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment and adoption of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the proposed MAR notice attached.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment and Adoption.